IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6801 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI H SOLANKI

Versus

STATE OF GUJARAT

Appearance:

Mr. B.P. Tanna, Sr. Counsel with
MR BC DAVE for Petitioner.
DS AFF.NOT FILED (R) for Respondent No. 1, 2, 3
Mrs. Siddhi Talati, AGP for the respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 15/03/2001

ORAL JUDGEMENT

The petitioner herein has a petrol-diesel outlet at GIDC, Odhav, Ahmedabad, and has licence to do business as a retailer of these products issued by the licensing authority. On 6th May 1998 an inspection/spot check was carried out at the petrol pump of the petitioner wherein certain irregularities were noticed and further action taken. A show cause notice was issued to the petitioner.

Three averments were made (1) There was a short supply of 43 ml. for every 5 litres of petrol (on an average); (2) the management of the petrol-diesel outlet was conducted by some person other than the licensee; and (3) the sample of the petrol drawn was found, on a laboratory analysis, not to be in conformity with the prescribed standards.

2. The petitioner submitted his written explanation to the show cause notice, and after considering the said reply and the materials placed on record by the petitioner in support of his defence, the Deputy Director of Civil Supplies, namely respondent No.2 by order dated 1st September 1998 cancelled the retail licence of the petitioner.

3. Being aggrieved by the said order, the petitioner filed an appeal before the appellate authority, which appeal was dismissed by order dated 28th December 1998.

Being aggrieved by the dismissal of the said appeal the petitioner preferred a revision application to the revisional authority, who dismissed the revision by order dated 6th August 1999.

4. The petitioner being aggrieved by the aforesaid three orders has preferred the present Special Civil Application challenging the said orders.

5. It is pertinent to note that the present petition professes to be one under Article 226 of the Constitution, and professes to be in relation to Articles 14, 19, 19(1)(g) and 21 of the Constitution of India. However, there cannot be any controversy as to the fact that it is the aforesaid three orders passed against the petitioner which are the subject matter of challenge in the present petition. It is equally obvious that this Court is not exercising appellate jurisdiction nor revisional jurisdiction in respect of those orders. This Court is exercising only powers of superintendence in respect of the judicial or quasi-judicial orders passed by the aforesaid authorities in the performance of their statutory jurisdiction to deal with the matters before them. The jurisdiction of this Court is, therefore, exercisable only under Article 227 of the Constitution. Before proceeding further on the merits of the matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of

this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

6. Only certain salient features require to be noted. It was contended that the findings of fact recorded by the authorities below that the petrol pump was not run by the licensee is a finding not sustainable on the facts of the case and the material on record, and/or is the finding based on no evidence.

It was urged on behalf of the petitioner that in fact the pump was being operated by the petitioner, and only the day to day administration was entrusted to the Manager of the said pump. It could not therefore be said that there was either a transfer of the business or that the petitioner was not doing business as a licensee in respect of the said pump. However, the authorities have dealt with this aspect, by relying upon the voluntary statement made by the petitioner himself before the Deputy Director (Enforcement) on 15th may 1998. That statement makes a categorical admission that the administration of the pump is done by Shri Jitendra Jain, who is obviously not the Manager. It is pertinent to note that this statement was made on 15th May 1998 whereas the inspection was carried out on 2nd of May 1998, i.e., to say 13 days after the incident. During this period of 13 days, the petitioner had no doubt ample opportunity to consider, in the context of events which had occurred on 2nd May 1998, and to formulate in his mind the defence which he wished to present, and that too after an opportunity of obtaining appropriate advice from appropriate quarters. In this context therefore when the petitioner retracted the aforesaid statement on 5th August 1998, i.e., say almost three months after the admission was made, such retraction must be seen in the context of the events as they occurred. There is a body of case law, which does not require discussion herein, to the effect that retraction of admissions made earlier by a party do not ipso facto wipe out the contents of or the facts stated in the said admission. It is only that the admission made in the earlier statement is required to be

read in the context of the retraction, with due regard to the circumstances which prevailed both at the time of making the admission and the lapse of time after which the retraction was made. No doubt, the retraction made by the petitioner is based on his allegation that the statement recorded at the time of inspection was given under a misrepresentation and threats. However it also requires to be noted that the said admission was made not on the day when the sample was collected namely 2nd May 1998, but was made before a responsible officer, in the office of the said officer and not at the site of the petrol pump, and was made 13 days after the incident. More over, the retraction was made almost three months after the admission made in the statement.

Further-more, as the Supreme Court has observed on a number of occasions, that the grounds usually forwarded by those who choose to effect a retraction of their earlier statements to the effect that the statements and the facts stated in such statements were made under threat or coercion or misrepresentation etc., are allegations which are extremely easy to make and extremely difficult to disprove. Therefore such retractions do not under any and all circumstances destroy the evidentiary value of the facts contained in the voluntary statement. Further-more, in the affidavit-in-reply filed on behalf of the respondents, the allegation of the petitioner that the statement was not given voluntarily and was given under coercion and pressure has been specifically and categorically denied. I, therefore, see no reason why the statement voluntarily made by the petitioner on 15th May 1998 should be discarded.

Once the statement is read as a voluntary statement made by the petitioner, the first charge, namely that the petitioner has ceased to operate the business and has transferred it to an outsider, stands established.

7. The second charge levelled against the petitioner and also found proved against him is that there was a short delivery of 43 ml. of petrol for every 5 litres of petrol taken by meter from the pump (average of 5 samples taken of 5 litres each). The fact that there was such a short delivery of this quantity is not disputed by the petitioner.

However, the petitioner states that the Government of Gujarat has issued guidelines in the form of a Circular dated 8th April 1999 as regards

disciplinary action to be taken for offences committed by dealers of petrol/diesel pumps. This Circular is at Page 12 of the petition.

Under the head of "Short Delivery", the said guidelines contemplate that if the extent of short delivery is between 21 ml. and 50 ml. and it is the first offence, only 25% of the security deposit should be forfeited, and suspension/cancellation of the licence should not be resorted to.

As against this it is urged by the respondents that these guidelines came into effect only on 8th April 1999, and obviously they have no retrospective effect. Thus, they would not cover the facts of the present case where the checking was done on 2nd May 1998.

Apart from the fact that the guidelines and circular cannot possibly have any retrospective effect, the fact remains that this guideline, as to the punishment to be imposed for short delivery, would apply only where short delivery is the only offence found proved against the licensee. These guidelines cannot possibly be interpreted to mean that the recommended guideline for punishment in respect of short delivery should be made applicable even where other and more serious offences such as adulteration are also found proved. This contention, therefore, would be of no assistance to the petitioner.

8. So far as the allegation of adulteration is concerned, the laboratory test report conducted by Indian Oil Corporation on the sample taken from the petitioner on 2nd May 1998 bears the remark "Sample fails to meet specification of distillation test".

It is pertinent to note that the validity of the said test report on the laboratory test carried out by I.O.C. is not specifically challenged by the petitioner. However, the petitioner has sought to raise doubts as regards the conclusion drawn in the said report by placing on record the contradictory opinion expressed by Prof. M.C. Dwivedi, Department of Chemical Engineering, Indian Institute of Technology, Bombay.

The opinion of this person, which professes to be an expert opinion, is required to be considered in its own light.

First of all, the opinion of Prof. M.C. Dwivedi does not, in any manner, indicate how and in what manner he is competent to comment upon the report of the Indian

Oil Corporation. The mere fact that he is a Professor in the Department of Chemical Engineering does not necessarily make him an expert in assessing the value of some other test report carried out by a competent laboratory.

Secondly, the opinion of Prof. M.C. Dwivedi, on the face of it, makes it clear that he has not himself analysed either the sample taken from the petrol pump nor a parallel sample taken at the same time as the sample analysed by I.O.C.

9. The report of Prof. Dwivedi itself makes it clear that it is an opinion or at best a criticism based only upon an examination (not of the sample of petrol) but only an examination of the report of the Indian Oil Corporation. At best, therefore, this opinion sought to be relied upon by the petitioner is in the nature of conjectures and surmises as to the procedure which may have been followed by the testing laboratory of I.O.C. Even otherwise, his conclusions are not firm or certain; the opinion is full of ifs and buts and conclusions drawn from conjectures. It is full of phrases such as "Heating seems to have been increased", "it is apparent that unit heating prescribed.....", "it is also not clear whether....." "it is also not clear if percent evaporation...." etc. At best, therefore, the opinion of Prof. Dwivedi is a criticism of another, competent laboratory report, based only upon an examination of such competent report. Even otherwise, the final conclusion drawn by Prof. Dwivedi is only to the effect that "I feel it is not fair to disqualify a sample.....". This opinion of Prof. Dwivedi, therefore, in my opinion, does not render the Laboratory Report of I.O.C. as incapable of establishing that the sample of petrol taken from the petitioner's pump was sub-standard.

It also requires to be noted that the aforesaid opinion of Prof. Dwivedi was merely placed on record, without any supporting evidence as to who obtained the said report, who commissioned the said report, whether the said report was actually dictated and signed by the said Prof. Dwivedi etc. In short, the opinion of Prof. Dwivedi is merely placed on record without proving the contents thereof.

10. In my opinion therefore, at the highest, the opinion of Prof. Dwivedi attempts to cast a shadow of doubt upon the Laboratory Report of the I.O.C., but fa to dislodge the latter as proof of the sample being sub-standard.

11. In view of the premises aforesaid, I am satisfied that there is no legitimate cause to interfere with the impugned orders. This petition is, therefore, without substance and the same requires to be dismissed. Accordingly Rule is discharged with no order as to costs.

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